KUAN KWAI CHOI

v.

AK ZAIDI BIN PG METALI

COURT OF APPEAL, BRUNEI
KUTLU FUAD P, SIR ALAN HUGGINS C &
SIR DEREK CONS C
[CIVIL APPEAL NO. 6 OF 1992]
22 MAY 1993

TORT: False imprisonment - Claim for damages - Appeal against quantum of damages awarded - Whether damages awarded adequate.

The defendant arrested the plaintiff, pursuant to a warrant of arrest, and brought her to the police station where she was locked up in a cell. The plaintiff was arrested on a Saturday and only taken to Court on the following Monday. The plaintiff sued the defendant for false imprisonment and claimed damages.

The trial Court concluded that although it had been the initial mistake of the defendant which had caused the plaintiff to be detained at the police station, the evidence had demonstrated that he had nothing further to do with her after 4 p.m. on the date of her arrest. The trial Court therefore held that it was only for the first 6 hours that the plaintiff had been falsely imprisoned as a result of the action taken by the defendant. The trial Court therefore awarded the plaintiff the sum of BD3,000 as damages.

The plaintiff appealed on the grounds that the the trial Court was wrong in holding that the defendant was no longer responsible for her continuing wrongful detention after 4 p.m. and contended that in view of this and in any event she had been awarded inadequate damages.

Held:

[1] The trial Judge was perfectly right in finding that the defendant himself could not be held responsible for the plaintiff's wrongful imprisonment after 4 p.m. on the day of her arrest. On the facts, such a finding would have been quite unsustainable and the award of BD3,000 as damages could not be faulted.

[2] It was not open to the defendant to release the plaintiff and he was not responsible for what happened after 4 p.m., whoever else may or may not have been responsible and liable in damages.

[Appeal dismissed].

a **Legislation referred to:**
Criminal Procedure Code, s. 47

Appellant in person
For the respondent - James Chiew; M/s. Abrahams Davidson & Co.

b **JUDGMENT**

Kutlu Fuad P:

This is an appeal by the plaintiff, Madam Kuan Kwai Choi, from the judgment dated 12 September 1992 of the Chief Justice, Dato' Sir Denys Roberts, in relation to the quantum of damages she was awarded in her successful action against Inspector Ak Zaidi bin Pg Metali of the Royal Brunei Police Force. Throughout the proceedings Madam Kuan has acted in person. The Chief Justice gave her judgment for BD3,000 general damages and costs.

The main facts were never in dispute. It seems that on 11 June 1990, Madam Kuan had not attended Court as she should have done in connection with a criminal charge pending against her. On that day, a Magistrate issued a warrant of arrest "to produce her before the Magistrate's Court at Bandar Seri Begawan". On 22 June 1990, the defendant's superior officer instructed him in a minute endorsed on the warrant to "proceed with it ... soonest".

Armed with the warrant, and accompanied by two women police constables, the defendant arrived at the plaintiff's house at about 10 a.m. on the following day. It is at Kg Anggrek Desa, Jalan Berakas, Bandar Seri Begawan. When told by the defendant about the warrant, the plaintiff said that she had failed to attend Court on 11th June because she had been sick. After changing her clothes, the plaintiff was taken in a police car to the police station nearest her home, at Berakas.

When the party reached the police station some 5 minutes later, the defendant made a record of the fact that he had brought the plaintiff there under arrest, in a register. At about 10.00 a.m. the plaintiff's personal belongings were taken away from her and she was locked up in a cell. Twenty third June 1990, was a Saturday.

The defendant then drove to the Central Police Station and, at about 11 a.m., wrote a minute to his superior officer DSP Kamaluddin. There was no response to this minute until 3.30 p.m. When the defendant spoke to the DSP at 4 p.m. he was ordered to take the plaintiff to the Court,

but when the DSP and the defendant telephoned the Court they could get no answer. Just before 4.30 p.m. the defendant made a note of the fact that he could not take Madam Kuan to Court in time that day.

On the following Monday, at 2 p.m., she was taken to Court by other police officers. The defendant had had nothing to do with the case after 4 p.m. on the Saturday.

The Chief Justice referred to s. 47 of the Criminal Procedure Code and held that since Madam Kuan should have been taken directly and "without unnecessary delay" to Court on the morning of her arrest, she had been falsely imprisoned from approximately 10.30 a.m. on Saturday 23 June to 2 p.m. on Monday 25 June, a total of 52 hours. However, he concluded that although it had been the initial mistake of the defendant which had caused Madam Kuan to be detained in Berakas Police Station, the evidence had demonstrated that he had had nothing to do with her after about 4 p.m. on 22 June. Thus it could reasonably be said that it was only between 10.30 a.m. and 4 p.m. on that day, the first 6 hours of her detention, after which the matter had been handed over by the defendant to the DSP, that Madam Kuan had been falsely imprisoned as a result of action taken by the defendant. From 4 p.m. on 23rd June, the DSP had had charge of her and was responsible for her continued false imprisonment. The defendant himself would not have been in a position to release her even had he wished to do so.

The Chief Justice then went on to consider the appropriate quantum of damages which should be awarded to Madam Kuan. He reviewed a number of authorities on the matter. He found that the plaintiff's reputation had been adversely affected as a result of the wrongful imprisonment but that there were no aggravating circumstances. He did not think that an award of exemplary damages would be justified. In conclusion, on this aspect of the case, he said:

> Had I been of the view that the defendant was responsible for the whole of the wrongful detention of Madam Kuan, I would have awarded to her a larger sum, perhaps ten thousand dollars. Taking into account the unusual circumstances, that the defendant was only responsible for her detention for a limited period, I think that she ought to be awarded a sum which is more than nominal and will to some degree compensate for her wrongful imprisonment for about six hours. I award the sum of BD3,000 as damages to the plaintiff.

By her Petition of Appeal, Madam Kuan asserts that the Chief Justice had been wrong in law and in fact when holding that the defendant was no longer responsible for her continuing wrongful detention in Berakas Police Station after 4 p.m. on 23 June 1990, and that in view of this and in any event, she had been awarded inadequate damages.

Madam Kuan has provided helpful submissions in writing to us. In them she submits that the Chief Justice was wrong in holding that although the defendant had initially been responsible for the false imprisonment, the failure of his superior, DSP Kamaluddin, to release her after 4 p.m. absolved him from further liability. In passing, I have to say that the example she gives is not a true analogy. She submits that on the facts of the case, the Court should have considered whether the failure of the DSP, after 4 p.m. on 23 June, to release her amounted to a *novus actus interveniens.* Her contention was that when the defendant left the police station at 4 p.m. on 23 June he very well knew, and had every reason to believe, that she would continue to be held in detention until she was produced in Court; what the DSP had done, or omitted to do, was to be expected and was reasonable and foreseeable. The Chief Justice had been wrong to say that the defendant was no longer responsible for any detention after 4 p.m.

I can well understand Madam Kuan's feeling that the defendant should be held responsible for the whole period of her detention - after all, had he not taken her to the police station but straight to Court, the wrongful imprisonment would never have occurred. However, whatever remedies she might have or have had, against any other police officer, or any authority, in my judgment the Chief Justice was perfectly right in finding that the defendant himself could not be held responsible for Madam Kuan's wrongful imprisonment after 4 p.m. on the day of her arrest. On the facts, in my view, such a finding would have been quite unsustainable.

As regards the damages awarded, although in Madam Kuan's Petition of Appeal she asserted that she should have been given exemplary or aggravated damages, she does not maintain this stand in her written submissions.

In my judgment, the award of BD3,000 damages cannot be faulted. I would dismiss the appeal.

Sir Alan Huggins C

I also would dismiss the appeal. The appellant raised two matters in the Petition. The first was that the damages should have been awarded for the period after 4 p.m. on 23 June and the second was in any event, the amount of damages was inadequate. Only the first of those two points has been taken in argument at the hearing.

This was an unfortunate case in which there was some misunderstanding. The Inspector who made the arrest clearly did not appreciate that it was his duty to take the appellant as soon as reasonably possible to the Court. He seems to have been aware that the matter was going to be mentioned in Court at 2 p.m. on the 25th, the following Monday and to have thought that as long as she was there at that time all would be well. It was not improper, in my view that he should have taken the appellant to a police station en route to the Court, but it was his duty to take her as soon as possible thereafter to the Court. His error was in detaining her in the police station. However, I do not think that the analogy which has been advanced of a clerk who was detained to the knowledge of somebody else is valid: mere knowledge is not sufficient. Here the Inspector was not responsible for the detention of the appellant after 4 p.m. and I think, as my Lord has said, that it was not open to him to release her and he is not responsible for what happened thereafter, whoever else may or may not have been responsible and liable in damages. For these reasons, I entirely agree with my Lord and the appeal ought to be dismissed.

Sir Derek Cons C

I agree with my Lords that the appeal should be dismissed for the reasons that have been given and there is nothing further that I wish to add.

PG TUAH BIN PG HJ KULA

v.

PUBLIC PROSECUTOR

HIGH COURT, BRUNEI
DATO' SIR DENYS ROBERTS CJ
[CRIMINAL APPEAL NO. 5 OF 1993]
19 APRIL 1993

CRIMINAL LAW: Charge under s. 6(a), Corruption Act (Cap 131) - Offence of corruptly attempting to obtain a gratification - Whether established - Fast approval of licence by defendant - Attempt to obtain sexual favours from complainant - Whether 'corrupt' intention proved - Whether sexual favours sought as reward for fast approval of licence; charge under s. 354, Penal Code - Offence of outraging the modesty of a woman - Whether established - Acts complained of - Whether constituted intention to outrage - Whether constituted criminal force - Section 350 Penal Code; sentence - Whether excessive - Acts complained of minor in nature - Whether could be viewed as serious infringement of s. 354, Penal Code - Public dislike of acts & other circumstances - Relevance.

The defendant was charged with two charges: the first charge, of corruptly attempting to obtain a gratification under s. 6(a) of the Corruption Act (Cap 131), alternatively, of an offence under s. 165 of the Penal Code; and the second charge, of outraging the modesty of a woman, contrary to s. 354 of the Penal Code.

The prosecution case depended mainly on the evidence of the complainant, a married Muslim woman of 37 years of age.

The complainant applied for a licence to employ foreign workers. The defendant got the application approved fast. He telephoned the complainant a number of times. He told the complainant that he had done it so quickly because she was 'special' and called her 'sayang'. He offered to deliver the licence himself. He told her that he wanted a kiss when she got the licence and that he wanted to take her to his flat to 'see things'. The complainant's husband reported the matter to the Anti Corruption Bureau (ACB). On the instructions of ACB officers, the complainant contacted the defendant, who delivered the licence to her house. She went with him in his car, as instructed by the ACB officers. In the car, the defendant told her that he was taking her to his flat. He held her hand and pinched her